



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

[Docket No. DARS-2015-0039]

RIN 0750-AI63

Defense Federal Acquisition Regulation Supplement: Contracts or Delivery Orders Issued by a Non-DoD Agency (DFARS Case 2015-D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove duplicative text relating to contracts or delivery orders issued by a non-DoD Agency and relocate remaining text to conform to the Federal Acquisition Regulation (FAR).

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, 571-372-6089.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to move the coverage at DFARS subpart 217.78, Contracts or Delivery Orders Issued by a Non-DoD Agency, to DFARS subpart 217.7, Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense. This change will align the DFARS with the same coverage in the FAR. In addition, some duplicative text and definitions for "non-DoD agency" and "non-DoD agency that is an element of the intelligence community" were removed from the DFARS coverage, since the subject matter is now addressed in FAR subpart 17.7.

II. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the Federal Acquisition Regulation is 41 U.S.C. 1707, Publication of Proposed Regulations. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it deletes duplicative text and

relocates text within the DFARS. These DFARS updates are administrative in nature and therefore do not have a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 217

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Add subpart 217.7 to read as follows:

Subpart 217.7—Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense
Sec.

217.700 Scope of subpart.

217.701 Definitions.

217.770 Procedures.

Subpart 217.7—Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

217.700 Scope of subpart.

This subpart—

(a) Implements section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.701 Definitions.

As used in this subpart—

Assisted acquisition means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

Direct acquisition means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

Governmentwide acquisition contract means a task or delivery order contract that—

- (1) Is entered into by a non-defense agency; and
- (2) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

217.770 Procedures.

Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

(1) Satisfying customer requirements;

(2) Schedule;

(3) Cost effectiveness (taking into account discounts and fees). In order to ensure awareness of the total cost of fees associated with use of a non-DoD contract, follow the procedures at PGI 217.703(1)(iii); and

(4) Contract administration (including oversight);

(b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(c) Reviewing funding to ensure that it is used in accordance with appropriation limitations; and

(d) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in subpart 204.6.

Subpart 217.78 [Removed and Reserved]

3. Remove and reserve subpart 217.78, consisting of sections 217.7800, 217.7801, and 217.7802.

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